the particular use can be non-natural, and in deciding this question I think that all the circumstances of the time and place and practice of mankind must be taken into consideration so that what might be regarded as dangerous or non-natural may vary according to those circumstances."

In *Attorney-General* v. *Cory Bros. & Co.* the trial judge found that the defendant company which had tipped a vast mass of colliery spoil on the side of a hill thereby causing a landslide were liable under the principle of *Rylands* v. *Fletcher* and on the ground of negligence. This decision was eventually affirmed by the House of Lords where three of the five Law Lords specifically upheld the trial judge's judgment that the company were liable under the *Rylands* v. *Fletcher* principle as well as on the ground of negligence.

I turn now to deal with the second ground put forward by counsel for the defendants. He contends that the doctrine of *Rylands* v. *Fletcher* applies only where the claim is for damage to some proprietary interest in land and that it does not apply to damage to personal property.

Counsel relies on passages in the opinion of the Law Lords in *Read* v. *Lyons* in support of this proposition but I can find nothing in those passages which in my opinion lay down such a proposition of law. One of those passages may support a proposition that the doctrine of *Rylands* v. *Fletcher* has nothing to do with personal injuries using that word in the strictly limited sense of bodily injuries but even that latter proposition according to *Salmond* on Torts 13th edition at page 578 cannot be upheld both in principle and on authority. Indeed in *Hale* v. *Jennings Bros.*[8] the Court of Appeal in England held the defendants liable on the principle of *Rylands* v. *Fletcher* where a chair, with its occupant, became detached from a chair-o-plane and seriously injured the plaintiff who was a tenant of a stand on a fair-ground belonging to the defendants who also owned and operated the chair-o-plane.

As regards damage to chattels there is clear authority that an occupier can recover for damage to his chattels under the rule in *Rylands* v. *Fletcher*. As early as 1868 Blackburn J. who first pronounced the doctrine now known as the rule in *Rylands* v. *Fletcher*, held the rule applicable to a case where sparks from a railway engine belonging to a railway company escaped and caused damage to a haystack belonging to the plaintiff in *Jones* v. *The Festiniog Railway Co.*[9]. Almost a century later Veale J. in *Halsey* v. *Esso Petroleum Co. Ltd.*[10] at page 692 said this:

"This doctrine of *Rylands* v. *Fletcher*, whether or not it is strictly based on nuisance, applies to the sulphuric acid or sulphate in smuts or oily drops wherever they alight: on washing hung out to dry, as well as on to a motor-car in the street."

Later on in this judgment he said at page 693:

"I have no doubt at all that the defendants have been the cause of the emission into the atmosphere of noxious smuts which have caused damage to the plaintiff's washing and to his motor-car. The smuts are noxious acid smuts, and it does not matter whether they contain sulphate or sulphuric acid. For this damage the defendants in my judgment are liable, both as for a nuisance and under *Rylands* v. *Fletcher*."

I accordingly am of the opinion that the learned trial judge was right in holding that the defendants were liable under the rule in *Rylands* v. *Fletcher* and I would therefore dismiss this appeal with costs.

Tan Ah Tah and **Buttrose JJ.** concurred.

Appeal dismissed.

Solicitors:—*L. A. J. Smith; Drew & Napier.*

T.T. RAJAH v. REGINA

[O.Cr.J. (Wee Chong Jin C.J.) June 26, 1963]

[Singapore — Criminal Motion No. 11 of 1963]

Criminal Procedure—Transfer of case—Trial fixed for hearing in 1st Criminal District Court—Application for transfer of case to High Court for trial—Criminal Procedure Code (Cap. 132), ss.176 & 177—Whether transfer to be preceded by preliminary inquiry or a direct transfer without preliminary inquiry for summary trial—Jurisdiction of the High Court in criminal matters —Courts Ordinance (Cap. 2), s.16(1)(d).

Criminal Law—Abetment of persons in the commission of offences under Penal Code, ss.124, 143 and 147 —Whether the Criminal District Courts have jurisdiction to try offence under s.124, Penal Code—Criminal Procedure Code (Cap. 132), ss.8 & 10.

The applicant was charged on three substantive charges of having abetted persons in the commission of offences under sections 124, 143 and 147 of the Penal Code and the trial was fixed for hearing before the 1st Criminal District Judge. Before the trial came on, he applied to the High Court under sections 176 and 177 of the Criminal Procedure Code that his case be transferred from the 1st Criminal District Court to the High Court for trial. His grounds of application included, *inter alia*, that a fair and impartial trial could not be had in any of the Criminal District Courts. The Crown agreed, without going into the merits, not to oppose an order of transfer on this particular ground.

The Crown contended that the order of transfer could only be made under section 176 of the Criminal Procedure Code and where an order is made under this section, the High Court can take cognizance of it and try it in a summary way, without a preliminary inquiry, under its original criminal jurisdiction as conferred by section 16(1)(d) of the Courts Ordinance.

The applicant contended that because the Criminal District Courts have no jurisdiction to try a charge under section 124 of the Penal Code, an order for transfer in so far as it pertained to a charge under section 124. must be made under section 177 of the Criminal Procedure Code and not under section 176; that a transfer

under section 177 could not be by way of a direct transfer but must be preceded by a preliminary inquiry. The applicant also argued that it was illegal for the High Court to exercise its original criminal jurisdiction without a preceding preliminary inquiry and committal. He further said that it has never been the practice for the High Court to exercise its original criminal jurisdiction without a preliminary inquiry and that he would be deprived of the right of showing at a preliminary inquiry that there were no sufficient grounds for committing him for trial by the High Court if the preliminary inquiry were not held.

With reference to the jurisdiction of the Criminal District Courts to try an offence under section 124 of the Penal Code, it was argued for the Crown that under section 10 of the Criminal Procedure Code any offence under the Penal Code could be tried by the High Court or by any other court by which such offence is shown to be triable in the eighth column of schedule 'A' to the Criminal Procedure Code and an offence under section 124 was shown in the schedule as triable by a Criminal District Court.

The applicant argued that an offence under section 124 carried with it imprisonment for a term which could extend to seven years and a liability to a fine whereas section 8 of the Criminal Procedure Code gives the Criminal District Court jurisdiction to try only those offences for which the maximum term of imprisonment does not exceed seven years or which are punishable with fine only and that the schedule to the Criminal Procedure Code in reference to section 124 was repugnant to the statute and under accepted canons of construction the statute must prevail.

Held: (1) section 8 of the Criminal Procedure Code is preceded by the words: "subject to this Code", whereas the words preceding section 10 of the same Code are: "notwithstanding the other provisions of this Code." The clear words of section 10 when read together with schedule "A" confer jurisdiction on the Criminal District Courts to try an offence under section 124, and since the provision in section 8 is "subject to this Code" it does not operate to cut down the jurisdiction given in section 10;

(2) as the Criminal District Courts have jurisdiction to try all the offences for which the applicant was charged, an order for transfer could only be considered under section 176 of the Criminal Procedure Code;

(3) an order for transfer made under section 176 of the Criminal Procedure Code does not call for a preliminary inquiry;

(4) there is, in fact, no provision in the Criminal Procedure Code which requires that before an accused person is brought before the High Court under its original criminal jurisdiction, there must first be a preliminary inquiry and a committal;

(5) an order for transfer under section 176 of the Criminal Procedure Code was a proper one to be made and would be made.

CRIMINAL MOTION.

Applicant in person.

T. Kulasekaram (Solicitor-General) with him *T. Sinnathuray* (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The applicant T.T. Rajah, at the date of this application is charged with three others in the 1st Criminal District Court in Case No. 108 of 1963 on three substantive charges of having abetted eight named persons in the commission of offences under sections 124, 143 and 147 of the Penal Code. In respect of the two charges under sections 143 and 147 of the Penal Code there are alternative charges. The trial on all these charges have been fixed for hearing before the 1st Criminal District Judge on the 22nd of July 1963.

The present application is for an order that this case be transferred from the Court of the First Criminal District Judge to the High Court for trial and for such further and other order as this Court may deem fit and expedient.

The applicant puts forward four grounds on which his application for transfer is made namely:—

(1) The Criminal District Courts have no jurisdiction to try the case in question;

(2) A fair and impartial trial cannot be had in any of the Criminal District Courts;

(3) Many questions of law of unusual difficulty are likely to arise, main particulars whereof are:—

(a) Interpretation and application of various sections of the Preservation of Public Security Ordinance including the law on solitary confinement;

(b) The scope, extent and limitations of the lawful powers of the Ministers and the Cabinet under the Singapore (Constitution) Order in Council 1958.

(c) The involved laws relating to the offence of attempting to overawe the Government etc.

(d) Various intricate laws relating to the questions of intention, abetment and attempt etc.

(4) It is expedient for the ends of justice for this case to be tried by this Honourable Court.

At the hearing of the application the learned Solicitor-General intimated to the Court that, without going into the merits, the Crown would not oppose an order that this case be transferred to and tried before the High Court on the ground that a fair and impartial trial cannot be had in any of the Criminal District Courts subordinate to the High Court as provided for by section 176 (1)(a) and (1)(ii) of the Criminal Procedure Code.

The question then remains whether the order for transfer of the case from the 1st Criminal District Court to the High Court for trial should take the form that the case should be first brought before a Magistrate's Court for a preliminary inquiry with a view to the committal of the accused persons for trial by the High Court or should take the form of an order for a direct transfer of the case from the 1st Criminal District Court to the High Court for a summary trial.

The learned Solicitor-General contends that where an application is made under section 176

of the Criminal Procedure Code and an order is made under section 176(1)(ii) the case is thereupon immediately transferred to the High Court and the High Court can take cognizance of it and try it in a summary way under its original criminal jurisdiction as conferred by section 16(1)(d) of the Courts Ordinance which reads as follows:—

"16.—(1) The original criminal jurisdiction of the High Court shall consist of—

(d) the jurisdiction and powers which belong to and are exercisable by any inferior court of criminal jurisdiction."

His contention is that section 176 provides for an order of transfer to the High Court and not for an order for committal, if sufficient grounds are disclosed by evidence at a preliminary inquiry, to the High Court.

The applicant who appeared on his own behalf contends however that his application is based not only on section 176 but also on section 177 of the Criminal Procedure Code. His contention is that in so far as his application is based on section 177 it is on the ground that the Criminal District Courts have no jurisdiction to try a charge under section 124 of the Penal Code.

As regards the point taken by the applicant on section 124 of the Penal Code he contends that an offence under section 124 of the Penal Code carries with it imprisonment for a term which may extend to seven years and liability to a fine whereas section 8 of the Criminal Procedure Code gives the Criminal District Courts jurisdiction to try only all offences for which the maximum term of imprisonment provided by law does not exceed seven years or which are punishable with fine only, so that an offence under section 124 of the Penal Code being punishable with imprisonment for seven years and a fine is not cognizable by the Criminal District Courts notwithstanding Schedule A to the Criminal Procedure Code which on the face of it provides that an offence under section 124 of the Penal Code is triable by a Criminal District Court besides the High Court. His argument is that in accordance with the canons of construction of a statute where a passage in a Schedule to a statute is repugnant to one in the body of the statute the latter must prevail.

Once it is shown that a District Court has no jurisdiction then according to the applicant section 177 of the Criminal Procedure Code provides for the accused to be brought before a Magistrate's Court with a view to the committal of the accused for trial by the High Court.

On the question of jurisdiction the learned Solicitor-General contends that section 10 of the Criminal Procedure Code commences with the following words: "Notwithstanding the other provisions of the Code" and goes on to provide—

(1) any offence under the Penal Code may be tried by the High Court or by any other court by which such offence is shown to be triable in the eighth column of Schedule A to this Code;"

and that accordingly by virtue of section 5 of the Interpretation and General Clauses Ordinance which provides that "every Schedule to an Ordinance shall, together with any note thereto, be construed as part of the Ordinance," the District Courts have jurisdiction to try offences under section 124 of the Penal Code.

An examination of section 8 of the Criminal Procedure Code shows that it commences with the words: "Subject to this Code" whereas section 10 commences with the words: "Notwithstanding the other provisions of this Code". In my opinion effect must be given to the clear meaning of the words "Subject to this Code" in section 8 and the words "Notwithstanding the other provisions of this Code" in section 10. Although it may well be arguable that under section 8 the jurisdiction of the District Court to try offences does not extend to offences which carry a maximum term of imprisonment exceeding seven years and punishable with fine, the jurisdiction conferred by section 8 is subject to the Criminal Procedure Code and section 10 of the Criminal Procedure Code together with Schedule A confers jurisdiction on the District Courts to try an offence under section 124 of the Penal Code notwithstanding the other provisions, which must include section 8, of the Criminal Procedure Code.

It follows therefore that in my view this application can only be considered under section 176 of the Criminal Procedure Code. On this point the applicant contends that it is illegal for the High Court to exercise its original criminal jurisdiction without the accused being committed for trial by the High Court after a preliminary inquiry. He also contends that it has never been the practice for the High Court to exercise its original criminal jurisdiction without a prior preliminary inquiry and draws the analogy that where there are now provisions in the Criminal Procedure Code for trials before the High Court without a jury it has always been the practice in respect of such trials that an accused person comes before the High Court after a committal by a Magistrate at a preliminary inquiry. His argument is that he would be deprived of the right of showing at the preliminary inquiry that there are no sufficient grounds for committing him for trial by the High Court if his case is transferred direct from the 1st Criminal District Court to the High Court for trial and that this is a basic right which is accorded to an accused

person where the High Court exercises its original criminal jurisdiction.

The short answer to the question I have to decide is, as stated by the learned Solicitor-General, that there is no provision in the Criminal Procedure Code which requires that before an accused person is brought before the High Court under its original criminal jurisdiction there must first be a preliminary inquiry and a committal for trial following upon such inquiry. It seems to me that it is not a question of what the practice has been but whether under the provisions of the Criminal Procedure Code the High Court can only take cognizance of an offence under the Penal Code after the matter has been first inquired into by a subordinate court with a view to committal for trial by the High Court. So considered it seems to me that the High Court is not precluded from so doing. Furthermore section 176 of the Criminal Procedure Code, which is the relevant section under which this application ought to be considered, specifically provides that the High Court may make an order that any particular case shall be transferred to and tried before the High Court without any qualifying words at all and in my view the discretion conferred by this section is not limited to a discretion to remit the case to a subordinate court for a preliminary inquiry with the view to committal of the accused for trial by the High Court. In my view section 176 enables the High Court in a proper case to make an order transferring any particular criminal case from a subordinate court direct to the High Court for trial by the High Court and for the High Court thereupon to dispose of that particular case by way of summary trial. In the result I now make an order that the 1st Criminal District Court Case No. 108 of 1963 be transferred to the High Court for summary trial on a date or dates to be fixed by the Registrar of this Court.

Case transferred to High Court for summary trial.

LIM KIEN MOK v. B. H. KEVAN

[A.Cr.J. (Ambrose J.) June 26, 1963]

[Singapore — Magistrate's Appeal No. 177 of 1962]

Landlord and Tenant—Notice to quit—Service on Tenant—Crown Lands Encroachments Ordinance (Cap. 245) ss. 2 and 20—Meaning of Crown Land—When statutory body Crown Servant or Agent—Whether Services' Lands Board Crown Agent—Whether land leased to Services' Lands Board Crown Land.

Crown Lands—Land leased by Crown to Services' Lands Board—Whether Crown land—Crown Lands Encroachments Ordinance (Cap. 245), s.2.

Constitutional Law—Crown—Whether one and indivisible as far as Singapore is concerned—Singapore (Constitution) Order in Council, 1958.

Interpretation—Reference to title to interpret Ordinance.

This appeal raised the question whether a piece of land which was leased by the Crown to the Services' Lands Board is Crown land within the meaning of section 2 of the Crown Lands Encroachments Ordinance. The facts were these. On January 1, 1958 a War Department Land Agent issued a licence to Lim Kien Mok for the temporary occupation of a portion of a piece of land, which was then Crown land occupied by the War Department. On May 28, 1959 the Crown leased the piece of land to the Services' Lands Board for nine hundred and ninety-nine years from January 1, 1959. This Board is a corporation incorporated in Singapore under the Services' Lands Board Ordinance, 1959 which came into operation on February 13, 1959. A notice to quit dated March 30, 1962 and addressed to Lim Kien Mok was posted on the same day on the main door of a house situated on the area occupied by Lim. The notice required Lim to quit the area on April 30, 1962, or other the day on which the current month of his licence would expire next after the end of one calendar month from the date of his being served with the notice. On May 31, 1962 a complaint was made by Brian Herbert Kevan, a War Department Land Agent and Deputy Collector of Land Revenue, to a Magistrate against Lim under section 2 of the Crown Lands Encroachments Ordinance, alleging that he was given a month's notice to quit on March 30, 1962, but had not vacated the portion of the Crown land occupied by him. Lim was summoned to answer the complaint. The Magistrate's Court found that the notice to quit had been duly served, and that Lim was in unlawful occupation of Crown land, and made an order for a warrant for dispossession to be issued, but stayed execution of the warrant pending the disposal of the present appeal.

Held: (1) the rule as regards service on a tenant is that a notice left at the tenant's house, but not served on anyone personally, is effectual if it can be proved that it actually came to his hands in time to give him notice of the proper length; and as the complainant failed to prove this, the Magistrate's finding and order must be set aside;

(2) upon the promulgation of the present Singapore Constitution on June 3, 1959, Crown lands in Singapore became vested in the Crown in right of Singapore and the Crown ceased to be one and indivisible as far as Crown lands in Singapore are concerned:

(3) the Services' Lands Board is an agent of the Crown in right of the United Kingdom;

(4) the fact that the Services' Lands Board holds the leased land for the purposes of the Crown in right of the United Kingdom does not make the land Crown land within the Crown Lands Encroachments Ordinance;

(5) "Crown land" in the Crown Lands Encroachments Ordinance means unalienated Crown land; and once a piece of land is alienated by the Crown it ceases to be Crown land for the purposes of the Ordinance;

(6) when the land was leased by the Crown to the Services' Lands Board it ceased to be Crown land; and thereafter it was not open to the War Department Land Agent to make use of section 2 of the Crown Lands Encroachments Ordinance to remove a person alleged to be in unlawful occupation of the leased land. *Deputy Public Prosecutor* v. *Lim Kian Mok*[2] not followed.

Cases referred to:—

(1) *Poh Yee Choi* v. *Shun Fah & Co.* [1948] M.L.J. 102.